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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
Implementation of Section  
309(j) of the Communications  
Act Competitive Bidding

PP Docket No. 93-253

REPLY COMMENTS OF  
THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry, representing the owners and operators of cable systems serving over 80 percent of the nation's approximately 56 million cable households.

In its Notice of Proposed Rulemaking, the Commission seeks comment on its limited authority to establish competitive bidding procedures for awarding initial licenses for use of radio spectrum. Pursuant to section 309(j) of the Communications Act of 1934, as amended by the Omnibus Budget Reconciliation Act of 1993,<sup>1/</sup> competitive bidding may be employed if the Commission determines that the license applications are mutually exclusive. In addition, the statute requires that the principal use of the

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1/ Communications Act of 1934, as amended, 47 U.S.C. Sections 151-713, as amended by Pub. L. No. 103-66.

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spectrum will involve, or is likely to involve, the licensee receiving compensation from subscribers in return for the transmission of communications signals.

In the Notice, the Commission suggests that CARS spectrum, to the extent it is used as an intermediate link in the provision of a continuous, end-to-end service to a paying subscriber, would be subject to competitive bidding.<sup>2/</sup> The comments filed by Joint Cable Parties demonstrate, however, that this initial interpretation of the statute is wholly misguided. Indeed, the Commission's proposal to apply spectrum auctions to CARS licenses is inappropriate both as a matter of law and public policy.<sup>3/</sup>

**I. CARS SPECTRUM IS NOT ALLOCATED ON A MUTUALLY EXCLUSIVE BASIS AND CARS BAND SIGNALS ARE NOT TRANSMITTED IN EXCHANGE FOR SUBSCRIBER COMPENSATION**

As the Joint Cable Parties demonstrate, the mechanism by which CARS spectrum is allocated dispels any doubt as to its eligibility for competitive bidding. Under the statute, the Commission may auction spectrum only when it must choose between two or more mutually exclusive license applications. Unlike PCS and other services, the licensing of CARS service is not based on a system of selection between competing applicants, but rather on a priority system. Under section 78.19(a) of the FCC's

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2/ Notice of Proposed Rulemaking at para. 29, n.11.

3/ See Comments of Cablevision Industries Corporation, Comcast Corporation, Cox Cable Communications, Jones Intercable, Inc. ("Joint Cable Parties"), filed November 10, 1993.

regulations, a cable operator seeking to utilize the CARS service must first determine the location of non-interfering frequencies within the CARS band by conducting a frequency coordination study. While all qualified cable operators are eligible for any CARS spectrum, existing users of a particular frequency are given priority use of the spectrum.

Thus, a competitive bidding process would be incompatible with the CARS allocation scheme "because the Commission's concern is resolving the practical problem of frequency interference, and that problem is resolved on a first-come, first-served basis under the rules by a precoordination process."<sup>4/</sup> Applications for CARS frequencies simply are not subject to a process of mutual exclusivity.

Moreover, the CARS service fails to meet one of the other statutory requirements of competitive bidding: that the principal use of the spectrum involves the transmission of signals in exchange for compensation from subscribers. As the Joint Cable Parties point out, CARS frequencies provide cable operators with internal and intermediate links which enable them to reach long distances between off-air receive points or between two or more systems, and where the use of coaxial cable is impractical or costly.<sup>5/</sup> In addition, CARS spectrum is

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4/ Comments of Joint Cable Parties at 4.

5/ Comments of Joint Cable Parties at 7. The use of spectrum in the CARS band constitutes a "private service", which

(Footnote continues on next page)

frequently used for a variety of other internal purposes unrelated to receipt of subscriber compensation, including transmissions to and from schools, local government facilities, and in-house studios. It also is used to transmit signals related to the operation and maintenance of the cable system.<sup>6/</sup>

In order for competitive bidding to apply, the service's "principal use" must involve the transmission or reception of signals to subscribers in exchange for compensation. Unlike MMDS service or the proposed PCS service, the CARS service is not used to transmit signals directly to and from subscribers. Rather, it is a private service, expressly excluded from competitive bidding under the statute.<sup>7/</sup>

**II. THE PUBLIC INTEREST OBJECTIVES OF THE ACT WILL NOT BE  
SERVED BY APPLYING A COMPETITIVE BIDDING PROCESS TO  
CARS SPECTRUM ALLOCATIONS**

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Apart from the tests of "mutual exclusivity" and "principal use", the statute requires the Commission to determine that application of competitive bidding will promote certain public policy objectives. Those objectives include "the development and rapid deployment of new technologies", "promoting economic opportunity and competition" to ensure accessibility to new and

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(Footnote continued)

includes any service that does not involve the receipt of compensation.

6/ Comments of Joint Cable Parties at 8 (citing 47 C.F.R. Section 78.11(b)(1993)).

7/ See H.R. Rep. No. 103-111, 103d Cong. 1st Sess. 253 (1993).

innovative technologies, and "efficient and intensive use of the electromagnetic spectrum".<sup>8/</sup> As the Joint Cable Parties make clear, none of these goals will be served by subjecting CARS spectrum to competitive bidding procedures.<sup>9/</sup>

In awarding new spectrum for PCS and LMDS users, for example, the Commission's proposal to utilize competitive bidding will expedite the availability of these new services for consumers. Otherwise, the Commission might be faced with holding arbitrary lotteries or lengthy comparative hearings in order to select new licensees. The allocation of CARS spectrum does not, however, involve mutually exclusive applicants. Cable operators may access the CARS band as soon as they identify non-interfering frequencies.

Thus, it makes no sense to replace the current system of coordinating CARS spectrum among non-interfering users with a system of auctions in which the cable operator might end up with no frequencies to facilitate the provision of cable service to rural and other unserved areas. Indeed, the primary purpose of the CARS service is to make spectrum available, where hard wire transmission is not practical or cost-effective. As a matter of policy, CARS spectrum usage should not be subject to competitive bidding.

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8/ 47 U.S.C. Section 309(j)(2)(B).


9/ See Comments of Joint Cable Parties at 5-7.

CONCLUSION

For the foregoing reasons, the Commission should not adopt its proposal to apply the competitive bidding process to the allocation of licenses in the CARS band.

Respectfully submitted,

NATIONAL CABLE TELEVISION  
ASSOCIATION, INC.

By 

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